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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,607	11/21/2003	James Edmond Van Trump	CL2121 US NA	3125

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THREE LITTLE FALLS CENTRE/1052
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WILMINGTON, DE 19808

EXAMINER

TENTONI, LEO B

ART UNIT	PAPER NUMBER
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1732

DATE MAILED: 04/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/719,607

Applicant(s)

VAN TRUMP, JAMES EDMOND

Examiner

Leo B. Tentoni

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>04052004;08062004</u> . | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-8, drawn to a process of making polyester bicomponent fibers, classified in class 264, subclass 172.17.

II. Claim 9, drawn to polyester bicomponent fibers (of PET and PPT), classified in class 428, subclass 373.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the process as claimed can be used to make another and materially different product such as polyester bicomponent fibers of PET and a copolyester of PET. The product as claimed can be made by another and materially different process such as a process including the steps of extruding two sheets of different polyesters, laminating the two sheets and

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longitudinally slitting the two sheets to form bicomponent fibers.

3. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Robert B. Furr, Jr., applicant's representative, on 24 March 2006 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-8. Affirmation of this election must be made by applicant in replying to this Office action. Claim 9 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United

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States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 2 and 4-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Ochi et al (EP 1059372 A2).

Ochi et al (see the entire document, in particular, paragraphs [0009], [0010], [0026], [0034] and [0043]) teach a process of making polyester bicomponent fibers as claimed. The aspect of a maximum shrinkage spinning rate is inherent in the process of Ochi et al principally because Ochi et al teach a spinning process using at least two crystallizable polyester polymers to make polyester bicomponent fibers having latent crimp.

7. Claims 1, 2 and 4-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Koyanagi et al (U.S. Patent Application Publication 2003/0052436 A1).

Koyanagi et al (see the entire document, in particular, paragraphs [0105] - [0107], [0112], [0120], [0297], [0319], [0325] and [0341]) teach a process of making polyester bicomponent fibers as claimed. The aspect of a maximum shrinkage spinning rate is inherent in the process of Koyanagi et al principally because Koyanagi et al teach a spinning process using at least two crystallizable polyester polymers to make polyester bicomponent fibers having latent crimp.

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8. Claims 1, 2 and 4-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Chang et al (U.S. Patent Application Publication 2002/0025433 A1). Chang et al (see the entire document, in particular, paragraphs [0003], [0005], [0008] - [0026], [0037], [0049] and [0053]) teach a process of making polyester bicomponent fibers as claimed. The aspect of a maximum shrinkage spinning rate is inherent in the process of Chang et al principally because Chang et al teach a spinning process using at least two crystallizable polyester polymers to make polyester bicomponent fibers having latent crimp.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Chang et al (U.S. Patent Application Publication 2002/0025433 A1), Koyanagi et al (U.S. Patent Application Publication 2003/0052436 A1) or Ochi et al (EP 1059372 A2).

Chang et al (see the entire document, in particular, paragraphs [0003], [0005], [0008] - [0026], [0037], [0049] and [0053]), Koyanagi et al (see the entire document, in particular, paragraphs [0105] - [0107], [0112], [0120], [0297], [0319], [0325] and [0341]) and Ochi et al (see the entire document, in particular, paragraphs [0009], [0010], [0026], [0034] and [0043]) teach a process of making polyester bicomponent fibers as claimed, except that these references do not explicitly teach the aspect of a maximum shrinkage spinning rate, which would have been obvious to one of ordinary skill in the art at the time the invention was made in view of any one of these references principally in order to manufacture a desired polyester bicomponent fiber product (e.g., a product having a desired amount of latent crimp). Polypropylene terephthalate (or

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PPT) polymer would have been obvious to one of ordinary skill in the art at the time the invention was made in view of any one of these references principally because the cited references teach polyester polymers in general and terephthalate-type polymers in particular, and also to manufacture a desired final product.

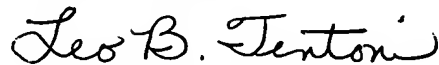
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leo B. Tentoni whose telephone number is (571) 272-1209. The examiner can normally be reached on Monday - Friday (6:30 A.M. - 3:00 P.M.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Colaianni can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Leo B. Tentoni
Primary Examiner
Art Unit 1732

lbt